Tee Thian See v Pendakwa Raya

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPEAL NO 42-10-94
KC VOHRAH J
14 OCTOBER 1996

Criminal Law *— Penal Code (Malaysia) — ss 467,472 — Forgery — Possessing forged credit cards — Essential ingredients of the offence to be proved*

Evidence *— Agent provocateur — Whether accomplice*

Evidence *— Corroboration — Agent provocateur — Evidence given by agent provocateur — Whether corroboration necessary*

SP17, a special agent in the US Secret Service, was investigating into the source in Malaysia in relation to 28 counterfeit credit cards found in the US. He was informed by the New York City Police that SP18, a Malaysian residing in New York, had some counterfeit credit cards in his possession. SP17 later became friendly with SP18. According to SP18, the appellant ('the accused') had left the cards in his apartment when he visited him as a guest in September 1990. SP17, SP18, and the police in Malaysia then arranged to trap the accused. SP18 telephoned the accused in Malaysia and ordered 30 gold cards for the price of US$1000 each. In May 1991, SP18 came to Kuala Lumpur. On 8 May 1991, the accused arrived at the hotel which SP18 was staying in a car. SP18 got into the car and the accused drove off. According to SP18, the accused handed an envelope containing 28 credit cards and slips of paper with numbers, the types of credit card, and signatures. When the car arrived in front of the hotel, SP18 handed the envelope back to the accused, and alighted from the car in order to get the money to pay for the cards. A team of Malaysian police personnel had been monitoring the movements of the accused since he arrived at the hotel until SP18 alighted from the car. The police intercepted the accused's car and arrested the accused. The police discovered an envelope containing 28 cards under the seat next to the driver's seat. The accused was charged with possession of counterfeit credit cards under s 467 of the Penal Code (FMS Cap 45) ('the Code'). The sessions court judge convicted the accused and sentenced him to four years' imprisonment and a fine of RM20,000 in default eight months' imprisonment. The accused appealed. Counsel for the accused had attacked SP18 and SP17 as being unworthy of credit as their perverse conspiracy to get someone to commit a crime led the accused to do what he did. He referred to them as accomplices who needed corroboration for their evidence. It was also argued that it was necessary for the prosecution to prove that the accused had himself intended to use the counterfeit credit cards for forgery. His argument was that the prosecution had not

proved that the accused was going to use them for himself to commit forgery, but in fact had showed that he intended to sell the cards to SP18. A

Held, dismissing the appeal:

(1) The ingredients of the offence that have to be proved in this case are: (i) that the accused had in his possession 28 plates and that he knew them to be counterfeit; (ii) that such plates were made to produce impressions; (iii) that the plates were intended to be used for the purpose of committing forgery; and (iv) that such forgery was punishable under s 467, ie in this case that the plates were intended to be used to forge documents which purport to be 'valuable securities' (see p 216H–I). B C

(2) The evidence was clear that the accused had in possession the 28 credit cards. The evidence was overwhelming that these 28 credit cards were counterfeit cards having regard to the definition of 'counterfeit' in s 28 of the Code. The facts of the case and also the evidence given by the witnesses (SP17 and SP18) showed that the accused knew the cards to be counterfeit (see p 217A–D). D

(3) SP17 and SP18 were agent provocateur as they had, together with the Malaysian Police, laid a trap for the accused. The evidence of an agent provocateur is not that of an accomplice and does not require corroboration (see p 217D–I); *Teja Singh & Anor v PP* [1950] MLJ 71 followed. E

(4) Each of these 28 cards, according to the expert witnesses, can be used to make a permanent impression of the embossed particulars on paper, credit sale slips or sales vouchers when used with an imprinting machine. Thus, the ingredient of the offence that such plates were made to produce impressions is satisfied (see p 218D). F

(5) In order to establish that a document is forged, the prosecution must give conclusive evidence that the document is a false document within the meaning of s 464 of the Code, and further that it was forged with one of the intentions mentioned in s 463. In respect of each of the 28 counterfeit cards, it has to be shown that a person may dishonestly or fraudulently make a document or part of a document denoting the execution of the document (through an impression of the card on a sales voucher and then forging a signature on it), with the intention of causing it to be believed that such document or part of the document is made by the authority of the person by whom or by whose authority it was not made (see p 219H–I); *Luchmi Singh v Emperor* AIR 1917 Pat 111 followed. G H I

(6) The intention is not for the person found in possession of a counterfeit seal, plate or other instrument to himself use the same to commit forgery; it is sufficient if the intention is that the same be used by anybody to commit forgery. It is not necessary

A for the prosecution to prove that the accused had himself intended to use the counterfeit credit cards for forgery (see p 218F–G).

(7) As to the necessity of proof that the plates were intended to be used for the purpose of committing forgery, it is quite clear that in respect of each of the 28 counterfeit credit cards, the falseness B of the card was that (i) it pretended to be issued by the issuer of that particular card; (ii) it pretended to be issued to the person named as holder of the card; (iii) it pretended to be issued under a genuine account number of the issuer; and (iv) it pretended to have a genuine validity period for its use. The card with all the false statements was meant to be used as genuine upon C presentation to a retailer to obtain good and/or services from the retailer (see p 218H–I).

(8) When a credit card is presented to the retailer after a purchase, the card is used to make a permanent impression on a credit sale slip or a sales voucher through the use of an imprinting machine. D The card is used to create a document, ie a sales voucher. If a counterfeit card is used, what it does is to create a false document. When the sales voucher is signed, it creates a legal right in the retailer to be paid it is certainly a valuable security within the meaning of s 30 of the Code (see pp 219A and 220F).

E **[Bahasa Malaysia summary**

SP17, seorang ejen istimewa di Perkhidmatan Rahsia AS, sedang membuat penyiasatan ke atas sumber di Malaysia berkenaan dengan 28 kad kredit lancung yang dijumpai di AS. Beliau diberitahu oleh New York City Police bahawa SP18, seorang warganegara Malaysia F yang menetap di New York, memiliki beberapa kad kredit lancung. SP17 kemudiannya mula berbaik dengan SP18. Menurut SP18, perayu ('tertuduh') telah meninggalkan kad-kad tersebut di pangsapurinya semasa tertuduh melawatnya sebagai tetamu pada bulan September 1990. SP17, SP18, dan pihak polis di Malaysia kemudiannya mengatur untuk memerangkap tertuduh. SP18 G menelefon tertuduh di Malaysia dan memesan 30 kad emas dengan harga AS$1000 tiap-tiap satu. Pada bulan Mei 1991, SP18 datang ke Kuala Lumpur. Pada 8 Mei 1991, tertuduh sampai di hotel di mana SP18 tinggal dengan sebuah kereta. SP18 menaiki kereta itu dan tertuduh terus memandu. Menurut SP18, tertuduh memberikan H satu sampul surat mengandungi 28 kad kredit dan slip-slip kertas dengan nombor, jenis kad kredit, dan tandatangan. Apabila kereta itu sampai di hadapan hotel, SP18 memberikan sampul surat itu balik kepada tertuduh, dan SP18 turun dari kereta untuk mendapatkan duit untuk membayar kad-kad itu. Satu pasukan kakitangan polis Malaysia telah memerhati pergerakan tertuduh sejak beliau sampai I di hotel sehingga SP18 turun dari kereta. Pihak polis menyekat kereta tertuduh dan menangkap tertuduh. Pihak polis menjumpai sampul surat mengandungi 28 kad di bawah tempat duduk di sebelah tempat duduk pemandu. Tertuduh telah dituduh memiliki kad kredit lancung di bawah s 467 Kanun Keseksaan (NMB Bab 45)('Kanun

tersebut'). Hakim mahkamah sesyen menyabitkan tertuduh dan beliau dihukum empat tahun penjara dan denda RM20,000 atau lapan bulan penjara jika gagal membayar denda. Tertuduh membuat rayuan. Peguam kepada tertuduh mendakwa bahawa SP18 dan SP17 tidak mempunyai kebolehpercayaan kerana komplot mereka yang memutarbelitkan seseorang untuk melakukan jenayah menyebabkan tertuduh melakukan apa yang telah dilakukannya. Beliau merujuk kepada mereka sebagai rakan sejenayah yang memerlukan sokongan untuk keterangan mereka. Beliau juga berhujah bahawa adalah perlu bagi pihak pendakwa untuk membuktikan bahawa tertuduh berniat untuk menggunakan kad kredit lancung untuk kegunaannya sendiri untuk pemalsuan. Hujah beliau adalah bahawa pihak pendakwa tidak membuktikan bahawa tertuduh akan menggunakan kad-kad itu untuk dirinya sendiri, tetapi sebenarnya menunjukkan bahawa tertuduh bertujuan untuk menjual kad-kad itu kepada SP18.

Diputuskan, menolak rayuan itu:

(1) Perkara-perkara yang perlu dibuktikan bagi kesalahan di dalam kes ini adalah : (i) bahawa tertuduh memiliki 28 pelit dan bahawa beliau mengetahui ianya adalah lancung; (ii) bahawa pelit-pelit itu dibuat untuk mengeluarkan teraan; (iii) bahawa pelit itu diniatkan untuk digunakan dengan niat untuk melakukan pemalsuan; dan (iv) bahawa pemalsuan itu boleh disiksa di bawah s 467, iaitu dalam kes ini bahawa pelit itu diniatkan untuk digunakan bagi memalsukan dokumen yang berupa sebagai suatu 'cagaran berharga' (lihat ms 216H–I).

(2) Bukti adalah jelas bahawa tertuduh memiliki 28 kad kredit. Bukti adalah sangat jelas bahawa 28 kad kredit itu adalah kad-kad lancung mengikut definisi 'lancung' di dalam s 28 Kanun tersebut. Fakta-fakta kes dan juga keterangan yang diberikan oleh saksi-saksi (SP17 dan SP18) menunjukan bahawa tertuduh mengetahui bahawa kad-kad itu adalah lancung (lihat ms 217A–D).

(3) SP17 dan SP18 adalah agent provocateur kerana mereka telah, bersama dengan pihak Polis Malaysia , memasang perangkap ke atas tertuduh. Keterangan daripada agent provocateur bukan keterangan daripada rakan sejenayah dan tidak memerlukan sokongan (lihat ms 217D–I); *Teja Singh & Anor v PP* [1950] MLJ 71 diikut.

(4) Tiap-tiap 28 kad itu, menurut saksi pakar, boleh digunakan untuk membuat teraan yang kekal bagi butir-butir yang dicetak timbul di atas kertas, slip jualan kredit atau baucar jualan apabila digunakan dengan mesin tera. Oleh itu, perkara di dalam kesalahan itu iaitu pelit-pelit itu dibuat untuk mengeluarkan teraan adalah dibuktikan (lihat ms 218D).

(5) Untuk membuktikan bahawa sesuatu suratan adalah palsu, pihak pendakwa mestilah memberi bukti yang konklusif bahawa suratan itu adalah palsu dalam maksud s 464, dan selanjutnya bahawa

ianya dipalsukan dengan niat seperti yang dinyatakan di dalam s 463. Berkenaan dengan tiap-tiap 28 kad kredit lancung itu, perlu ditunjukkan bahawa seseorang mungkin dengan curangnya atau dengan tipuan membuat sesuatu suratan atau sesebahagian suratan atau membuat apa-apa tanda yang menunjukkan sesuatu suratan telah disempurnakan (melalui teraan kad itu di atas baucar jualan dan kemudiannya memalsukan tandatangan ke atasnya), dengan niat hendak menyebabkan supaya suratan atau sesebahagian suratan itu dipercayai telah dibuat dengan kuasa seseorang yang olehnya atau dengan kuasanya tidak dibuat (lihat ms 219H–I); *Luchmi Singh v Emperor* AIR 1917 Pat 111 diikut.

(6) Niat bukanlah pada seseorang yang didapati memiliki meteri, pelit lancung atau lain-lain alat untuk dengan sendirinya menggunakan alat-alat tersebut untuk melakukan pemalsuan; adalah memadai jika niat adalah alat-alat tersebut digunakan oleh sesiapa sahaja untuk melakukan pemalsuan. Adalah tidak perlu bagi pihak pendakwa untuk membuktikan bahawa tertuduh sendiri berniat untuk menggunakan kad kredit lancung untuk pemalsuan (lihat ms 218F–G).

(7) Berkenaan dengan keperluan untuk membuktikan bahawa pelit-pelit itu diniatkan untuk digunakan untuk tujuan melakukan pemalsuan, adalah agak jelas bahawa bagi tiap-tiap 28 kad kredit lancung itu, kepalsuan kad itu adalah (i) ia mendakwa dikeluarkan oleh pengeluar kad berkenaan; (ii) ia mendakwa dikeluarkan kepada seseorang yang dinamakan sebagai pemegang kad itu; (iii) ia mendakwa dikeluarkan dibawah nombor akaun sebenar pengeluar kad itu; dan (iv) ia mendakwa mempunyai tempoh masa sebenar untuk kegunaannya. Kad dengan semua kenyataan palsu bertujuan untuk digunakan sebagai kad yang sebenar apabila dikemukakan kepada penjual untuk memperolehi barangan dan/ atau perkhidmatan daripada penjual (lihat ms 218H–I).

(8) Apabila kad kredit dikemukakan kepada penjual selepas pembelian, kad itu digunakan untuk membuat teraan yang kekal di atas slip jualan kredit atau baucar jualan melalui kegunaan mesin tera. Kad itu digunakan untuk mewujudkan suatu suratan, iaitu baucar jualan. Jika kad lancung digunakan, ia telah mewujudkan suatu suratan palsu. Apabila baucar jualan itu ditandatangani, ia mewujudkan hak undang-undang kepada penjual untuk menerima bayaran dan ini semestinya adalah cagaran berharga dalam maksud s 30 Kanun tersebut (lihat ms 219A dan 220F).]

Notes

For cases on forgery, see 4 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1302–1315

For cases on agent provocateur, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 131–146.

For cases on corroboration, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 526–620.

Cases referred to

Charge Cards Services Ltd, Re [1986] 3 WLR 697
Luchmi Singh v Emperor AIR 1917 Pat 111
Teja Singh & Anor v PP [1950] MLJ 71

Legislation referred to

Penal Code (FMS Cap 45) ss 28, 30, 463, 464, 467, 472

Appeal from: Kes Tangkap No 62–47–91 (Sessions Court, Kuala Lumpur)

Jeffrey Fernandez (*Fernandez & Co*) for the appellant.
Sallehuddin Saidin (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

KC Vohrah J: In the Sessions Court, Kuala Lumpur, the appellant (hereinafter referred to as 'the accused') was found guilty and convicted on the following charge:

> That you, on or about 8 May 1991, at about 5.20pm, at the front of Equatorial Hotel, Jalan Sultan Ismail, in the Federal Territory of Kuala Lumpur, had in your possession counterfeit plates, or instruments, to wit 28 credit cards as per attached list, knowing the same to be counterfeit, intending that the same shall be used for the purpose of committing any forgery which would be punishable under s 467 of the Penal Code (FMS Cap 45), and that you have thereby committed an offence punishable under s 472 of the same Code.

He was sentenced to four years' imprisonment and a fine of RM20,000 in default eight months' imprisonment.

The facts of the case

The prosecution's case against the accused is far from mundane.

SP17, a special agent in the US Secret Service, became friendly with SP18, a Malaysian residing in New York, after he was informed by the New York City Police that SP18 had some counterfeit credit cards in his possession and was being investigated. According to SP18, the accused had left these cards in his apartment in New York.

SP17, in the meantime, was making investigations into the source in Malaysia in relation to 28 counterfeit credit cards found in the US which had nothing to do with SP18.

SP18 first met the accused in Kuala Lumpur in August 1990 and then had him as a guest in his apartment in New York in September 1990.

A In March 1991, SP18, while in New York, made a telephone call to the accused in Malaysia requesting the accused to provide him with 10 counterfeit credit cards. In April 1991, SP18 received 10 counterfeit credit cards through the mail, and SP18 arranged to wire payment for the cards which were purchased at US$1000 each.

B In May 1991, SP18 with SP17 came to Kuala Lumpur. This was after SP18 had telephoned the accused that he needed 30 Gold Cards and that he was going to Kuala Lumpur and would be staying at Hotel Equatorial. The accused, according to SP18, wanted US$1000 for each card.

C On 8 May 1991, at between 4–5pm, SP18 waited in front of Hotel Equatorial. The accused arrived at the hotel in a car and SP18 got into the car and sat in the passenger's seat in front. The accused drove off and took a large envelope from under SP18's seat and handed it over to SP18. SP18 found three smaller envelopes inside the large envelope. The accused told SP18 that he had only 28 cards, not 30 and SP18 agreed to buy them. D SP18 found that the three smaller envelopes contained cards which were 'American Gold Card, Master Gold Card and Visa Gold Card'. He also found slips of paper, each written with a number, the type of credit card, and a signature. He put the cards and slips into the smaller envelopes and inserted these into the large envelope and handed the large envelope to the accused. All the while, the accused was driving the car. When the car E arrived in front of the hotel, SP18 alighted from the car ostensibly in order to get the money to pay for the cards.

Earlier, when SP17 and SP18 arrived in Kuala Lumpur, they had informed the police about the intended purchase of the counterfeit credit cards from the accused, and the police arranged for SP18 to request the F accused to come to Hotel Equatorial on 8 May 1991.

Inspector Iskandar (SP1) from the Malaysian Police and a team of police personnel, monitored the movements of the accused as soon as he arrived at the hotel on the said date at about 5.15pm. He saw SP18 get into the accused's car and he tailed the car as it drove along Jalan Pinang G and back to the hotel where SP18 alighted from the car. Shortly after that, the police intercepted the car and arrested the accused.

SP1 took over the wheel of the car, and with the accused and some police personnel in the car, went to the police headquarters at Bukit Aman.

H On arrival there, SP1 examined the car in the presence of the accused, and discovered an envelope containing three smaller envelopes which had 28 cards under the seat next to the driver's seat. They appeared to be eight American Express cards, eight Hongkong Visa Gold Cards, seven Standard Chartered Visa Gold Cards, five MBf Master Gold Cards, each of them bearing the name of a different person. None of them had signatures I affixed on the panels at the back of the cards.

In one of the three smaller envelopes, 30 slips of paper were found (P7(1–30)). All the slips indicated names and numbers and showed

signatures. Most of them were handwritten. There were some slips which were credit card imprints and two have been attached to two slips which were handwritten.There were 30 names, but 28 names and numbers corresponded with the names and numbers of the 28 cards.

The learned judge accepted the prosecution evidence that the credit cards were not issued by the banks or institutions which purported to issue them, and that they were all counterfeit cards. In any event, there was no dispute that they were counterfeit credit cards.

There was, however, dispute that some of the said cards that were produced in court were not amongst those that were recovered from the accused. I am, however, satisfied with the finding of the learned judge and her reasons for so finding that those were the ones that were recovered.

The defence

When the accused was called upon to make his defence on the charge, he elected to remain silent, but he called two witnesses. One was a senior police officer who had expressed an opinion, which was reported in a newspaper, that it is not an offence to be in possession of a forged credit card unless the person uses it and that he had suggested amending the law so that possession of a forged credit card would be an offence. The next witness, Neo Tim Heng, stated that he made all the 28 cards for the accused as the accused had intended to sell them and that he received a cheque of RM14,800 for the forged cards.

The offence under s 472

Section 472 of the Penal Code (FMS Cap 45) ('the Code'), under which the accused was convicted, reads as follows:

> Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467, or with such intent has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

The ingredients of the offence

The ingredients of the offence that have to be proved in this case are:

(1) that the accused had in his possession 28 plates and that he knew them to be counterfeit;

(2) that such plates were made to produce impressions;

(3) that the plates were intended to be used for the purpose of committing forgery; and

(4) that such forgery was punishable under s 467, ie in this case that the plates were intended to be used to forge documents which purport to be 'valuable securities'.

The first ingredient: possession and knowledge

The evidence was clear that the accused had in his possession the 28 credit cards. The evidence was overwhelming that these 28 credit cards were counterfeit cards, having regard to the definition of 'counterfeit' in s 28 of the Code. It was not just one counterfeit card that he had — he had 28 counterfeit cards in addition to his own valid credit card — and the judge's finding that he knew them to be counterfeit is clearly sound. That the accused knew the cards to be counterfeit is also borne out by the fact that 28 of the 30 slips of paper found with the cards showed that against each of the names in the slips corresponding with each of the names in the counterfeit card there was what appeared to be a purported signature relating to the name, and the inference is that whoever was to use the card had to forge such signature. Then again, the evidence of SP18 who pretended that he was going to buy the cards and the evidence of SP17, the US Secret Service agent, clearly reveals that the accused knew the cards to be counterfeit.

Accomplice or agent provocateur

Counsel for the accused had attacked SP18 and SP17 as being unworthy of credit as their perverse conspiracy to get someone to commit a crime led the accused to do what he did. He referred to them as accomplices who needed corroboration for their evidence. The learned judge, however, considered SP18 as an agent provocateur, and said that his evidence did not require corroboration. I agree with the view of the learned judge that SP18 was an agent provocateur, and I would go further to say SP17 too was one as they had, together with the Malaysian police, laid a trap for the accused. The evidence of an agent provocateur is not that of an accomplice and does not require corroboration: *Teja Singh & Anor v PP* [1950] MLJ 71. In *Teja Singh*, Spenser-Wilkinson J (as he then was) considered *Brannan v Peek* [1947] 2 All ER 573 (which was also relied upon by counsel for the accused), *R v Mullins* (1848) 3 Cox CC 526, *R v Bickley* (1909) 73 JP 239, *R v Heuser* (1910) 6 Cr App Rep 76, and quoted this passage with approval from *R v Mullins* (at p 75):

> An accomplice confesses himself a criminal, and may have a motive for giving information, as it may purchase immunity for his offence. A spy, on the other hand, may be an honest man, he may think that the course he pursues is absolutely essential for the protection of his own interests and those of society; and if he does so, if he believes that there is no other method of counter-acting the dangerous designs of wicked men, I can see no impropriety in his taking upon himself the character of an informer. The government are, no doubt, justified in employing spies; and I do not see that a person so employed deserves to be blamed if he investigates offences no further than by pretending to concur with the perpetrators. Under such circumstances they are entirely distinguished in fact and in principle from accomplices, and although their evidence is entirely for the jury to judge of, I am bound to say that they are not such persons as it is the practice to say require corroboration.

The second ingredient: plates made to produce impressions A

I pause here to say that the expert witnesses in this case did not distinguish between credit cards and charge cards and debit cards. Suffice it to say the expression 'credit card' is used for convenience in this case to mean all three types of cards, meaning a card which entitles the holder, upon presentation, to obtain goods and/or services from a retailer, because prior B arrangements have been made between the retailer and the issuer of the card which allows goods and/or services to be provided on the basis that payment will be made by the issuer to the retailer (see *Re Charge Cards Services Ltd* [1986] 3 WLR 697).

The evidence and an inspection of the cards showed all 28 cards to C be plates, hard flat material, albeit all of plastic material, and they all have particulars — names, letters and numbers — embossed on them.

I now come to the second ingredient of the offence, ie that such plates were made to produce impressions. Each of these 28 cards, according to the expert witnesses, can be used to make a permanent impression of D the embossed particulars on paper, on credit sale slips or sales vouchers when used with an imprinting machine.

The third ingredient: plates intended to be used for forgery

I now come to the third ingredient, ie the intention of the accused in E respect of the 28 counterfeit credit cards in his possession. The intention that needs to be proved as stated in s 472 is 'Whoever ... intending that the same shall be used for the purpose of committing any forgery...', not 'Whoever ... intending to use the same for committing any forgery...'. The language, to my mind, shows that the intention is not for the person found in possession of a counterfeit seal, plate or other instrument to himself use F the same to commit forgery; it is sufficient if the intention is that the same be used by anybody to commit forgery, and I reject the argument of counsel for the accused that it is necessary for the prosecution to prove that the accused had himself intended to use the counterfeit credit cards for forgery. His argument was that the prosecution had not proved that the accused was going to use them for himself to commit forgery, but in fact G had showed that he intended to sell the cards to SP18.

As to the necessity of proof that the plates were intended to be used for the purpose of committing forgery, it is quite clear that in respect of each of the 28 counterfeit credit cards, the falseness of the card was that: (i) it pretended to be issued by the issuer of that particular card; (ii) it H pretended to be issued to the person named as holder of the card; (iii) it pretended to be issued under a genuine account number of the issuer; and (iv) it pretended to have a genuine validity period for its use. The card with all the false statements was meant to be used as genuine upon presentation to a retailer to obtain goods and/or services from the retailer, where the I retailer has had prior arrangements with the issuer of the genuine credit card to allow goods and/or services to be provided on the basis that payment will be made by the issuer to the retailer.

A When a credit card is presented to the retailer after a purchase, the card is used to make a permanent impression on a credit sale slip or a sales voucher through the use of an imprinting machine. The card is used to create a document, ie a sales voucher. If a counterfeit card is used, what it does is to create a false document. What is further required is a signature purporting to be that of the presenter of the card, and once that has been B obtained, the sales voucher becomes a purported 'valuable security' within the meaning of s 467 of the Code. I shall deal with this matter later.

Does the sales voucher require a signature of the presenter of the card in all cases where a credit card is used? In the context of this case, it is not necessary to consider those cases where cards (although not signed) C 'are capable of being used to make (sales) transactions'. As was explained by SP16 — the vice president of Security Mismanagement, Master Card International of the Asian Pacific Region, and who has had 13 years experience, inter alia, in the detection of counterfeit cards — such circumstances would apply to mail order or telephone order purchases D where the presence of the card is not necessary to perform the transaction.

In respect of each of the 28 counterfeit credit cards, no signature appears on the back panel. The signature on the panel on a genuine credit card is for verification of the signature on the sales voucher affixed by the presenter of the card. In connection with this, SP16 gave his expert view that in the case of a (genuine) credit card, the mere fact that a person may E have innocently forgotten to sign his card would not necessarily prevent its use at a merchant location; and in such a case, the merchant may simply request the presenter of the card to sign his name on the signature panel, and where he deems it appropriate, seek advice from the bank with whom he has a merchant agreement in respect of the card. This expert witness F expressed the view — again a reasonable and certainly a commonsensical view — that in the case of counterfeit cards, they are often supplied unsigned in order that they may be sold or used by the recipients or other persons simply by signing a name in any convenient style that suits them in the sales slip.

G There is a need to prove that the intention is that the counterfeit cards shall be used for committing any forgery under s 467 of the Code. Section 467 deals with the forging of a document which purports to be a valuable security or certain categories of documents mentioned therein.

In order to establish that a document is forged, the prosecution must give conclusive evidence that the document is a false document within the H meaning of s 464; and further, that it was forged with one of the intentions mentioned in s 463 (see *Luchmi Singh v Emperor* AIR 1917 Pat 111).

For our purpose, in respect of each of the 28 counterfeit cards, it has to be shown that a person may dishonestly or fraudulently make a document or part of a document denoting the execution of the document (through an I impression of the card on a sales voucher and then forging a signature on it), with the intention of causing it to be believed that such document or part of the document was made by the authority of the person by whom or by whose authority it was not made. There can be no doubt whatsoever

that with the large number of counterfeit credit cards found together with the slips of papers showing corresponding names and sample signatures, the irresistible inference is that they were intended to be used dishonestly or fraudulently, and that the cards were to be used at retail outlets for purchases of goods and/or services by their presentation at these outlets for impressions to be made of them on sales vouchers and signed by the presenters.

The fourth ingredient: forged document a valuable security

I now come to the fourth ingredient of the offence that has to be proved. That the sales voucher, after it is signed by the presenter, purports to be a 'valuable security' is also clear (see s 30 of the Code) having regard to the nature of a genuine credit card transaction. There are three parties to the transaction: the cardholder, the retailer and the issuer of the card. The essence of a credit card transaction is that the retailer and the cardholder have — for their mutual convenience — each previously arranged to open an account with the same company (the card issuer), and agreed that any account between themselves, if the cardholder wishes, be settled by crediting the retailer and debiting the cardholder's account with the issuer of the card (see *Re Charge Card Services Ltd* [1986] 3 WLR 697).

In a sales transaction involving a credit card, the cardholder will sign on a sales voucher after the cardholder has had his card used for imprinting on the sales voucher. The sales voucher would be in three copies: one for the cardholder, the other for the retailer and the third for the card issuer. The card issuer, on receipt of the third copy, will in due course pay to the retailer the face value of the sales voucher less an agreed commission (see *Re Charge Card Services Ltd* at p 702). What the signed sales voucher does is to create a legal right in the retailer to be paid the face value of the sales voucher less an agreed commission and it is certainly a valuable security within the meaning of s 30 of the Code.

Thus, when any of the 28 counterfeit cards is used by a person for a credit card transaction for the purchase of goods or services, and the signature on the sales voucher is forged by him, he forges a document which purports to be a valuable security; and clearly, by his obtaining goods or services on the sale transaction through the deception, he wrongfully gains from the transaction.

In my view, all the ingredients of the offence have been satisfied in the case. Although the learned judge of the sessions court did not give an explanation as to the law involved, her findings were in accordance with the law that the accused had committed the offence he was charged with. In the circumstances, the conviction is affirmed. I can see no reason to interfere with the sentence. The appeal against conviction and sentence is dismissed.

Appeal dismissed.

Reported by Jafisah Jaafar